

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

Date: MAR 29 2000

Contact Person:

ID Number:

Telephone Number:

Employer Identification Number:

Dear Applicant:

We have considered your application for recognition of exemption from federal income tax under section 501(a) of the Internal Revenue Code as an organization described in section 501(c)(3). Based on the information submitted, we have concluded that you do not qualify for exemption under that section. The basis for our conclusion is set forth below.

Your primary goal is to construct, develop, acquire, renovate, manage, operate and own interests in low-income housing facilities for persons of limited financial means, qualified housing for mentally and physically disabled persons, and qualified housing for elderly persons.

There are three members your board of directors. and

You state in your application Form 1023 (Continuation sheet for Part II, Pg. 2, No. 1) that you are "...a charitable housing organization formed to promote and facilitate the expansion and preservation of affordable housing, combat community deterioration through improved housing, reduce housing density in areas experiencing neighborhood tensions, ameliorate housing discrimination and meet the special housing needs of disabled persons. Your activities shall include:

1. acquisition, by contribution or purchase, of existing housing facilities, or interests therein, which are or can be converted to affordable housing for low and moderate income households;
2. sponsor or otherwise assist in creating new housing, or substantially rehabilitating existing housing, through participation in federal, state and local government housing programs;
3. local funds for acquisition and/or rehabilitation of existing residential property or construction of new residences for low and moderate income households consistent with the organization's charitable purposes;
4. provide funding in the form of loans for "start-up" and other pre-acquisition costs incurred in the development of affordable housing for low and moderate income households, which may not be readily available for other sources; and
5. serve as a general partner of new or existing partnerships owning housing in which the organization's charitable purposes will be implemented."

[REDACTED]

In furtherance of your charitable housing activities, you intend to raise funds from the proceeds of state and local government tax exempt bond financings, and to accept contributions of limited partnership interests in partnerships that own residential rental housing facilities, or notes and contracts receivable that may be secured by partnership interests in the same, which implement or perpetuate charitable rental policies consistent with your affordability guidelines. You may exert your voting rights as a limited partner to cause a sale of the property to an organization that would foster a comparable charitable rental policy or use the property for another charitable purpose.

You anticipate that your principal sources of support will be derived from: a) contributions from local, state and federal government agencies upon the issuance of tax exempt bonds, from individuals and from other organizations; and b) income from its ownership of housing facilities. Written solicitation materials do not exist. You do not intend to use selective mailings or professional fundraisers.

You indicate that you may have one or more of your facilities managed by another organization when, for example, such action is required by a particular lender. Because you have not yet acquired any such facilities and had not entered into any such management agreements, copies of such agreements were not included in this application.

Your original application contained a document (Resolution of unanimous written consent) stating that; "...possibility of the acquisition of [REDACTED] located in [REDACTED]"

On [REDACTED] you were advised of Revenue Procedure 90-27 *infra*, and you were requested to provide detailed information about your proposed activities but your response dated [REDACTED] provided no detailed information such as name of seller, price, commissions to be paid, etc., were provided about your proposed acquisition.

Also in your response, you indicate a company called Summit Properties will act as your agent in real estate negotiations..." (see, [REDACTED] response, pg. 2, para. 2, number 2). In our letter of [REDACTED] you were asked to provide information. Your response dated [REDACTED] did not respond to this inquiry concerning Summit Properties.

In your [REDACTED] response you stated that: "The project currently proposed to be acquired is a [REDACTED] apartment complex known as the [REDACTED]" in [REDACTED]

In your [REDACTED] response to the Service's inquiry concerning your application it was stated, "...[REDACTED] was unable to complete the acquisition of the facility described in my [REDACTED] letter...". This was also the reason given as to why you were unable to respond to the Service's questions.

You have repeatedly failed to answer questions concerning proposed operations (see also, response to Service on [REDACTED]). However, you have stated (pg. 2, para 3, of the [REDACTED] response); "A likely facility manager will be the [REDACTED] You have stated that The board of directors of both [REDACTED] and you consist of some of the same individuals.

In our letter of [REDACTED] you were requested to supply the detailed information normally found in a bond offering statement relative to your proposed property acquisition.

[REDACTED]

In your [REDACTED] response, pg. 3, para 1, you state: "...no preliminary offering statement for bonds will be prepared until after [REDACTED] has received a conditional recognition of its exemption."

Section 501(a) of the Internal Revenue Code states, "[a]n organization described in subsection (c) or (d) or section 401(a) shall be exempt from taxation under this subtitle [Subtitle A – income taxes], unless such exemption is denied under section 501 or 503."

Section 501(c)(3) of the Code provides for the exemption from Federal income tax of organizations organized and operated exclusively for charitable purposes.

Section 1.501(c)(3)-1(a)(1) of the Income Tax Regulations provides that in order to be exempt as an organization described in section 501(c)(3), an organization must be both organized and operated exclusively for one or more of the purposes specified in such sections. If any organization fails to meet either the organizational test or the operational test, it is not exempt.

Section 501(c)(3)-1(b) of the Code for the organizational test generally. An organization is organized exclusively for one or more exempt purposes only its articles of organization:

- (a) Limit the purposes of such organization to one or more exempt purpose; and
- (b) Do not expressly empower the organization to engage, otherwise than as an insubstantial part of its activities, in activities which in themselves are not in furtherance of one or more exempt purposes.

Section 1.501(c)(3)-1(c)(1) of the regulations provides that an organization will be regarded as operated exclusively for one or more exempt purposes only if it is engaged primarily in activities which accomplish one or more of such exempt purposes specified in section 501(c)(3). An organization will not be so regarded if more than an insubstantial part of its activities is not in furtherance of an exempt purpose.

Section 1.501(c)(3)-1(c)(2) of the regulations provided that an organization is not operated exclusively for one or more exempt purposes if its net earnings inure in whole or in part to the benefit of private shareholders or individuals.

Section 1.501(c)(3)-1(d) of the regulations state in general an organization may be exempt as an organization described in section 501(c)(3) if it is organized for one or more of the following purposes:

(a) Religious, (b) Charitable, (c) Scientific, (d) Testing for public safety, (e) Literary, (f) Educational, (g) Prevention of cruelty to children or animals.

Section 1.501(c)(3)-1(d)(1)(ii) of the regulations states that an organization is not organized or operated for one or more exempt purposes unless it serves a public rather than a private interest. Accordingly, it is necessary for an organization to establish that it is not organized or operated for the benefit of private interests such as designated individuals, the creator, shareholders, or persons controlled, directly or indirectly, by such private interests.

Section 1.501(c)(3)-1(d)(2) of the regulations defines the term "charitable" as used in section 501(c)(3) in its generally accepted legal sense. Such term includes: Relief of the poor and distressed or of the underprivileged; advancement of religion; advancement of education or science; erection or

[REDACTED]

maintenance of public buildings, monuments, or works; lessening of the burdens of Government; and promotion of social welfare.

Rev. Proc. 90-4, 1990-1 C.B. 410, at section 7 provides that the Service may decline to issue a ruling or a determination letter wherever warranted by the facts or circumstances of a particular case.

Rev. Proc. 90-27, 1990-1 C.B. 514, provides, in part, that exempt status will be recognized in advance of operations if proposed operations can be described in sufficient detail to permit a conclusion that the organization will clearly meet the particular requirements of the section under which exemption is claimed. The organization must fully describe the activities in which it expects to engage, including the standards, criteria, procedures, or other means adopted or planned, and the nature of the contemplated expenditures. Where the organization cannot demonstrate to the satisfaction of the Service that its proposed activities will be exempt, a record of actual operations may be required before a ruling or a determination letter will be issued. In those cases where an organization is unable to describe fully its purposes and activities, a refusal to issue a ruling or determination letter will be considered an initial adverse determination from which administrative appeal or protest rights will be afforded.

Harding Hospital, Inc. v. United States, 505 F.2d 1068 (1974), holds that an organization seeking a ruling as to recognition of its tax-exempt status has the burden of proving that it satisfies the requirements of the particular exemption statute. Whether an organization has satisfied the operational test is a question of fact. See, also, *Christian Stewardship Assistance, Inc. v. Commissioner*, 69 T.C. 1037, 1042 (1978).

Better Business Bureau v. United States, 316 U.S. 279 (1945), holds that the existence of a single non-exempt purpose, if substantial in nature, will destroy the exemption under section 501(c)(3). An organization will be regarded as operated exclusively for one or more exempt purposes only if it engages primarily in activities which accomplish one or more of such purposes.

Based on the information that you have submitted, we have concluded that you have not established that you qualify for recognition of exemption under section 501(c)(3) of the Code. You have not provided the Service with sufficient information regarding your future operations to demonstrate that your organization will clearly meet the requirements of section 501(c)(3) of the Code. You have been unable to provide any information regarding any prospective project you have, or may, consider developing in the future. You have not furnished sufficient information, which, to permit a conclusion that you will clearly meet the requirements of section 501(c)(3). See, Rev. Proc. 90-27, *supra*. Thus, we have concluded that we cannot recognize your organization as exempt until you can provide the Service with a record of actual operations of your organization.

Your primary activities have to be described in sufficient detail to permit a conclusion that the organization clearly meets the pertinent statutory requirements. A mere restatement of purposes or a statement that proposed activities would be in furtherance of the organization's purposes does not satisfy this requirement.

You stated in your [REDACTED] response, the [REDACTED] would be "a likely facility manager...". Your board of directors and the operating officers of [REDACTED] consist of some of the same individuals. There is an indication that for-profit interests such as third party property managers may participate in the project and receive substantial benefits.

[REDACTED]

You have failed to supply such information that would enable a conclusion that when operational, you will conduct all of your activities in a manner, which will accomplish your exempt purpose.

Based on the above, we have concluded you have failed to establish that you will be operated exclusively for charitable purposes. You are therefore not described in Section 501(C)(3) of the Code and are not exempt from federal income taxes by reasons of Section 501(a) of the Code. Contributions to you are not deductible under section 170 of the Code. You are required to file federal income tax returns.

You have the right to protest this ruling if you believe it is incorrect. To protest, you should submit a statement of your views to this office, with a full explanation of your reasoning. This statement, signed by one of your officers, must be submitted within 30 days from the date of this letter. You also have a right to a conference in this office after your statement is submitted. You must request the conference, if you want one, when you file your protest statement. If you are to be represented by someone who is not one of your officers, that person will need to file a proper power of attorney and otherwise qualify under our Conference and Practices Requirements.

If you do not protest this ruling in a timely manner, it will be considered by the Internal Revenue Service as a failure to exhaust available administrative remedies. Section 7428(b)(2) of the Code provides, in part, that a declaratory judgment or decree under this section shall not be issued in any proceeding unless the Tax Court, the United States Court of Federal Claims, or the District Court of the United States for the District of Columbia determines that the organization involved has exhausted administrative remedies available to it within the Internal Revenue Service.

If we do not hear from you within 30 days, this ruling will become final and a copy will be forwarded to the Ohio Tax Exempt and Government Entities (TE/GE) office. Thereafter, any questions about your federal income tax status should be directed to that office, either by calling 877-829-5500 (a toll free number) or sending correspondence to: Internal Revenue Service, TE/GE Customer Service, P.O. Box 2508, Cincinnati, OH 45201. The appropriate State Officials will be notified of this action in accordance with Code section 6104(c).

When sending additional letters to us with respect to this case, you will expedite their receipt by using the following address:

Internal Revenue Service
[REDACTED] T:EO:RA:T:4, Room 6238
1111 Constitution Ave, N.W.
Washington, D.C. 20224

[REDACTED]

We have sent a copy of this letter to your representative as indicated in your power of attorney.

If you have any questions, please contact the person whose name and telephone number are shown in the heading of this letter.

Sincerely,

(signed) Garland A. Carter
Garland A. Carter
Manager, Exempt Organizations
Technical Group 2

[REDACTED]

[REDACTED]